Manonmani v Great Eastern Life Assurance Co Ltd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R8-24-3-90
EUSOFF CHIN J
12 NOVEMBER 1990

Insurance — Payment of sum assured — Whether defendant's refusal to pay plaintiff moneys under life assurance policy was unlawful — Whether payment by defendant of moneys payable under the insurance policies to Official Administrator was correct — Whether lack of privity of contract between plaintiff and defendant prevented plaintiff from suing the defendant — Insurance Act 1963, s 44 — Probate and Administration Act 1959, s 83 — Civil Law Act 1956, s 23 — Insurance (Payment of Life Policy Moneys) Regulations 1983, reg 2

The deceased had before his death taken out two insurance policies on his life with the defendant. One was a whole life assurance with profits, the beneficiary of which was his mother, the plaintiff. The other was a life policy on his life, the beneficiaries of which were his wife and son. After the deceased's death, the plaintiff and the deceased's wife claimed the insurance moneys in the two policies. The moneys payable to the plaintiff under the first policy was $57,717.02 while the moneys payable under the second policy to the deceased's wife and child was $26,925.89.

The defendant, purporting to act under s 44 of the Insurance Act 1963, paid $12,116.65 to the deceased's wife out of the second policy but refused to pay the balance of the amount under the second policy to the widow of the deceased nor the sums due under the first policy to the plaintiff. The defendant insisted that payment would only be made to the legal personal representative upon the production of letters of administration of the estate of the deceased.

Later, upon request by the Official Administrator, the defendant paid the moneys under the two policies still remaining with the defendant to the Official Administrator. The Official Administrator had purportedly acted under s 83 of the Probate and Administration Act 1959 when he requested the defendant to pay the moneys under the two insurance policies to him.

The plaintiff, not having received anything under the deceased's life policy of which she was the beneficiary, filed an application in the High Court against the defendant for the determination of the following questions:

(a) whether the plaintiff, a named beneficiary of the deceased under the first policy issued by the defendant, was the sole beneficiary for all moneys payable under the said policy;
(b) if the determination in (a) was in the affirmative, would it then follow that all acts by the defendant's refusal to pay the plaintiff the sum of $57,717.02 being the benefits payable under the said policy was unlawful;
(c) if the court determined that the plaintiff was the proper person to benefit from the first policy, whether it then followed that payment was to be made to the plaintiff.

The defendant's counsel raised the issue of locus standi of the plaintiff in bringing the action, claiming that there was no privity of contract between the plaintiff and the defendant, since the contract, ie the first policy, was made between the deceased and the defendant. Three provisions of law were also cited in argument before the learned judge, ie s 83 of the Probate and Administration Act 1959, s 23 of the Civil Law Act 1956 and s 44 of the Insurance Act 1963.

Held, answering the plaintiff's questions (a) and (b) in the affirmative and ordering payment to be made by the defendant to the plaintiff:

(1) The first policy contained a clause naming the plaintiff as beneficiary under the policy. This clause clearly showed that the defendant had contracted to pay the moneys under the policy to the plaintiff as the only beneficiary named by the deceased upon the death of the deceased. No statutory provision was shown which would have prevented the defendant from paying the money to the plaintiff nor was fraud or misrepresentation pleaded by the defendant. Therefore, though the plaintiff was not a party to the contract between the deceased and the defendant she was certainly privy to the consideration, had a claim on the money and was entitled to sue the defendant for its payment to her.

(2) As far as the wife and child of the deceased were concerned, it was crystal clear that by virtue of s 23 of the Civil Law Act 1956 as the policy of assurance was effected by the assured on his own life and expressed to be for the benefit of his wife and child, the moneys payable under the second policy did not form part of the deceased's estate. The moneys under the second policy should therefore have been paid out by the defendant to the widow of the deceased and the Official Administrator committed an error when he requested for these moneys to be paid to him for his distribution under s 83 of the Probate and Administration Act 1959.

(3) The deceased had left no will but had expressly appointed and named the plaintiff as the sole beneficiary in his first policy and the defendant had agreed to pay the insurance moneys under the first policy to the beneficiary appointed and named by the deceased.

(4) The interest of the beneficiary was liable to be defeated by the deceased revoking the appointment, but this would only result in an interest otherwise vested becoming divested but the fact remained that the deceased in his life time never revoked the appointment of the plaintiff as the sole beneficiary under the first policy and hence the plaintiff's interest had not been divested and was still subsisting when the deceased died.

(5) The life policy where the plaintiff was appointed and named as sole beneficiary was a whole life policy which meant that the policy money would not be paid to the deceased during his life time but would only become payable upon his death. This was unlike the second policy which was an endowment policy for a period of 25 years where, had the deceased survived that period, he would have been able to collect the sum assured.

(6) As regards the first policy, since it had been agreed between the defendant and the deceased that the policy was to form a binding contract between them and that the defendant had agreed to pay the named beneficiary (the plaintiff) the moneys due under the policy on the death of the deceased, the defendant was bound to honour the contract and the beneficiary (the plaintiff) if not paid was entitled to sue the defendant for the moneys payable under that policy without the production of any letters of administration of the estate of the deceased.

(7) The purpose of s 44 of the Insurance Act 1963 was no doubt to facilitate and expedite payment by an insurer of any money due under a life policy to a 'proper claimant' without the need for the claimant to first obtain letters of administration. This section would apply where the deceased

policy owner either had not appointed and named any beneficiary in the policy to receive the policy money upon his death (in which case the policy money would go to his estate) or had specifically stated in the policy that the policy money should go to his estate when he died. In that event the insurer is nevertheless authorized by this section to pay out the policy money to a 'proper claimant' as described under s 44(5) of the Insurance Act 1963, the payment being subject to s 44(2) and the Insurance (Payment of Life Policy Moneys) Regulations 1983.

(8) Since the moneys payable by the defendant under the two policies had been deposited with the Official Administrator, they should be refunded to the defendant for payments to the beneficiaries named in the policies.

[Bahasa Malaysia summary

Sebelum kematiannya, simati mengambil dua polisi insuran atas nyawanya dengan defendan. Satu ialah polisi asurans seumur hidup dengan untung, benefisiari ialah emaknya, si plaintif. Yang satu lagi ialah polisi nyawa atas nyawanya sendiri, benefisiari ialah isteri dan anaknya. Selepas kematian simati, plaintif dan balu simati menuntut wang insuran di bawah kedua-dua polisi tersebut. Wang yang kena dibayar kepada plaintif di bawah polisi pertama ialah $57,717.02 manakala wang yang kena dibayar di bawah polisi kedua kepada balu dan anak simati ialah $26,925.89.

Defendan, yang dikatakan bertindak di bawah s 44 Akta Insuran 1963 membayar $12,116.65 kepada balu simati daripada polisi kedua tetapi enggan membayar baki amaun di bawah polisi kedua kepada balu simati ataupun jumlah yang kena dibayar di bawah polisi pertama kepada plaintif. Defendan menegaskan bahawa bayaran hanya akan dibuat kepada wakil diri di sisi undang-undang setelah surat kuasa estet simati dikemukakan.

Selepas itu, atas permintaan Pentadbir Pusaka Awam, defendan membayar wang-wang di bawah kedua-dua polisi yang masih ada dengan defendan kepada Pentadbir Pusaka Awam. Pentadbir Pusaka Awam dikatakan telah bertindak di bawah s 83 Akta Probet dan Pentadbiran 1959 ketika beliau meminta defendan membayar wang-wang di bawah kedua-dua polisi insuran kepadanya.

Oleh kerana plaintif tidak menerima apa-apa di bawah polisi nyawa simati di mana dia adalah benefisiari, dia telah memfail suatu permohonan di Mahkamah Tinggi terhadap defendan untuk keputusan soalan-soalan berikutnya:

(a) sama ada plaintif, benefisiari simati yang dinamakan di bawah polisi pertama yang dikeluarkan oleh defendan, adalah benefisiari tunggal untuk kesemua wang yang kena dibayar di bawah polisi tersebut;
(b) jika keputusan dalam (a) disahkan, adakah diikuti bahawa kesemua tindakan oleh keengganan defendan untuk membayar plaintif amaun sebanyak $57,717.02 faedah yang kena dibayar di bawah polisi tersebut adalah menyalahi undang-undang;
(c) jika mahkamah memutuskan bahawa plaintif adalah orang yang layak dan sesuai untuk mengambil faedah daripada polisi pertama, sama ada diikuti bahawa bayaran mesti dibuat kepada plaintif.

Peguam defendan menimbulkan isu locus standi plaintif dalam membawa tindakan, mendakwa bahawa tidak ada priviti kontrak di antara plaintif dan defendan kerana kontrak yakni polisi pertama dibuat di antara simati dengan defendan. Tiga peruntukan perundangan dinamakan dalam hujah di hadapan hakim yang bijaksana, yaitu, s 83 Akta Probet dan Pentadbiran 1959, s 23 Akta Sivil 1956 dan s 44 Akta Insuran 1963.

Diputuskan, menjawab soalan-soalan plaintif (a) dan (b) secara sah dan mengarahkan bayaran dibuat oleh defendan kepada plaintif:

(1) Polisi pertama mengandungi suatu fasal menamakan plaintif sebagai benefisiari di bawah polisi. Fasal ini secara terang menunjukkan bahawa defendan telah berjanji untuk membayar wang-wang di bawah polisi kepada plaintif sebagai benefisiari tunggal yang dinamakan oleh simati pada kematian simati. Tidak ada peruntukan statutori yang ditunjukkan yang menghalang defendan daripada membayar wang kepada plaintif dan tidak juga fraud ataupun salahnya dipli oleh defendan. Oleh itu, walaupun plaintif bukan suatu pihak kepada kontrak antara simati dan defendan, dia tentu sekali privi kepada balasan, dan mempunyai suatu tuntutan atas wang dan berhak menuntut defendan untuk pembayarannya kepadanya.

(2) Sejauh yang berkenaan dengan isteri dan anak simati, adalah sangat jelas bahawa melalui s 23 Ordinan Undang-Undang Sibil 1956, oleh kerana polisi insurans diambil oleh simati atas nyawa dirinya dan dinyatakan bagi faedah isteri dan anaknya, wang-wang yang kena dibayar di bawah polisi kedua tidak menjadi sebahagian daripada estet simati. Wang yang kena dibayar di bawah polisi kedua semestinya dibayar oleh defendan kepada balu simati dan Pentadbir Pusaka Awam telah tersalah apabila beliau meminta untuk wang-wang tersebut dibayar kepada pihaknya untuk dibahagi olehnya di bawah s 83 Akta Probet dan Pentadbiran 1959.

(3) Simati tidak meninggalkan wasiat tetapi telah secara nyata melantik dan menamakan plaintif sebagai benefisiari tunggal dalam polisi pertamanya dan defendan telah berjanji membayar wang insuran di bawah polisi pertama kepada benefisiari yang dilantik dan dinamakan oleh simati.

(4) Kepentingan benefisiari boleh ditewas dengan simati menarikbalik perlantikan itu, tetapi ini akan hanya mengakibatkan suatu kepentingan yang pada awalnya sudah letakhak dijadikan lucuthak tetapi fakta yang wujud ialah simati dalam masa hidupnya tidak sama sekali menarikbalik perlantikan plaintif sebagai benefisiari tunggal di bawah polisi pertama dan oleh itu kepentingan plaintif tidak dilucut hak dan masih wujud semasa simati meninggal dunia.

(5) Polisi nyawa di mana plaintif dilantik dan dinamakan sebagai benefisiari tunggal bermakna bahawa wang polisi tidak akan dibayar kepada simati dalam masa hidupnya tetapi hanya kena dibayar pada kematiannya. Ini tidak sama dengan polisi kedua yang merupakan polisi endowmen untuk tempoh 25 tahun di mana, sekiranya simati takat tempoh tersebut, dia bolehlah mengambil wang yang dijanjikan itu.

(6) Mengenai polisi pertama, oleh kerana telah dijanjikan antara defendan dan simati bahawa polisi menjadi kontrak yang mengikat antara mereka dan bahawa defendan telah berjanji membayar benefisiari (plaintif) yang dinamakan, wang yang kena dibayar di bawah polisi pada kematian simati, defendan diikat untuk menunaikan kontrak dan benefisiari (plaintif) jika tidak dibayar adalah berhak menuntut defendan untuk wang yang kena dibayar di bawah polisi tersebut tanpa mengemukakan sebarang surat kuasa estet simati.

(7) Tujuan s 44 Akta Insuran 1963 tidak was-was lagi menyenangkan dan mempercepatkan pembayaran oleh pihak insuran untuk sebarang wang yang kena dibayar di bawah polisi nyawa kepada orang menuntut yang wajar tanpa keperluan bagi orang menuntut itu memperolehi surat kuasa terlebih dahulu. Seksyen ini terpakai di mana pemilik polisi yang

mati tidak melantik dan menamakan benefisiari dalam polisi untuk menerima wang polisi pada kematiannya (di mana dalam kes ini wang polisi akan pergi kepada estetnya) atau telah secara spesifik menyatakan dalam polisi bahawa wang polisi seharusnya pergi kepada estetnya apabila dia mati. Dalam kejadian sedemikian, pihak insuran walau bagaimanapun, diberi kuasa oleh seksyen ini untuk membayar wang polisi kepada orang menuntut yang wajar seperti disifatkan di bawah s 44(5) Akta Insuran 1963, bayaran tersebut tertakluk kepada s 44(2) dan Peraturan-Peraturan Insuran (Bayaran Wang Polisi Nyawa) 1983.

(8) Oleh kerana wang-wang yang kena dibayar oleh defendan di bawah kedua-dua polisi telah disimpan dengan Pentadbir Pusaka Awam, mereka perlu dibayar kembali kepada defendan untuk pembayaran dibuat kepada benefisiari yang dinamakan dalam polisi-polisi.]

[*Editorial Note*: The defendant's appeal to the Supreme Court vide Civil Appeal No 02-234 of 1990 was heard on 8 January 1991 and the court (comprising Abdul Hamid LP, Ajaib Singh SCJ and Wan Yahya J) allowed the appeal to the extent that since the insurance money had already been paid by the appellant to the Officer Administrator, the Official Assignee should make payment to the respondent directly instead of returning the money to the appellant to be paid to the respondent.

Cases referred to

1 *Kepong Prospecting Ltd & Ors* v *Schmidt* [1968] 1 MLJ 170 (distd)
2 *GR Nair & Anor* v *Eastern Mining & Metals Co Sdn Bhd* [1974] 1 MLJ 176 (distd)
3 *Cleaver & Ors* v *Mutual Reserve Fund Life Association* [1892] 1 QB 147 (distd)
4 *Re Clay's Policy of Assurance; Clay* v *Earnshaw* [1937] 2 All ER 548 (distd)
5 *Re Sinclair's Life Policy* [1938] 1 Ch 799 (distd)
6 *Re Schebsman* [1943] Ch 366 (refd)
7 *Re Man bin Mihat, deceased* [1965] 2 MLJ 1 (folld)

Legislation referred to

Civil Law Act 1956 s 23
Insurance Act 1963 s 44
Probate and Administration Act 1959 s 83
Insurance (Payment of Life Policy Moneys) Regulations 1983 reg 2

RK Nathan for the plaintiff.
N Nadkarni for the defendant.

Cur Adv Vult

Eusoff Chin J: The plaintiff is the mother of Thillai Nathan s/o K Shanmugavelu (deceased) who died on 20 November 1988. The deceased had married Chin Ah Moi, on 27 August 1983, and they had a son Ravin Chin s/o Thillai Nathan.

After his marriage, the deceased took from the defendant two insurance policies on his life. One is policy No 847798-2. It is a whole life assurance with profits. The date of commencement of the policy was 12 February 1984. The sum assured would only be payable upon the death of the deceased. He appointed and named the beneficiary to receive the sum assured 'S Manonmani, mother of the assured', ie the plaintiff.

The other policy is No 5040459-4. It was a life policy on the life of the deceased, commencing on 18 January 1986. The sum assured would become payable at the end of 25 years from the date of commencement or upon the previous death of the assured. The beneficiaries named in this policy were Chin Ah Moi (deceased's wife) and Ravin Chin (deceased's son).

Each of these policies states that 'the policy and the proposal therefor with any special provisions/endorsements made by the company taken together constitute the entire contract ...'.

After the deceased's death, the wife and the mother of the deceased claimed the insurance moneys in the two policies. The money payable to the plaintiff under policy No 847798-2 was $57,717.02 and that under policy No 5040459-4 payable to the wife and child of deceased was $26,925.89. The defendant, purporting to act under s 44 of the Insurance Act 1963, paid $12,116.65 to the deceased's wife out of policy No 5040459-4. The defendant refused to pay the balance of the amount under this policy to the widow of the deceased, and the sums due under the other policy to the plaintiff. The defendant insisted that payment would only be made to the legal personal representative upon the production of letters of administration of the estate of the deceased. Later, upon request by the Official Administrator, the defendant paid the moneys under the two policies still remaining with the defendant to the Official Administrator. The Official Administrator had purportedly acted under s 83 of the Probate and Administration Act 1959 when he requested the defendant to pay the moneys under the two insurance policies to him.

The plaintiff, not having received anything under the deceased's life policy in which she is the named beneficiary, filed an application in the High Court against the defendant, for the determination of the following questions:

(a) Whether the plaintiff, a named beneficiary of Thillai Nathan s/o K Shanmugavelu (now deceased) under Policy No 847798 issued by the defendant is the sole beneficiary for all moneys payable under the said policy.
(b) If the determination is in the affirmative then would it follow that all acts by the defendant's refusal to pay the plaintiff the sum of $57,717.02 (ringgit fifty seven thousand seven hundred and seventeen and sen two) only being the benefits payable under the said policy is unlawful.
(c) If it is the determination of the honourable court that the proper person to benefit from the said policy is the plaintiff, then it follows that the payment is to be made to the plaintiff forthwith.

Before me, learned counsel for the defendant raised the issue of locus standi of the plaintiff in bringing this

action. He said there was no privity of contract between the plaintiff and the defendant, because the contract, ie policy No 847798-2 was made between the deceased and the defendant. He cited:

(1) *Kepong Prospecting Ltd & Ors* v *Schmidt.*[1] I do not think this case applies here as the facts there are entirely different. There, all the parties were still alive. It concerned two contracts pertaining to services rendered in obtaining prospecting permits and payments of 1% tribute to the appellant on sale of tin ore.

(2) *GR Nair & Anor* v *Eastern Mining & Metals Co Sdn Bhd.*[2] I find this case too is not relevant as it concerns a group all sickness policy taken by an employer (Eastern Mining & Metals Co Sdn Bhd) to insure itself for its own purpose. There was neither an express trust nor a constructive trust in favour of the two appellants (the employees) in the policy taken by the employer.

(3) *Cleaver & Ors* v *Mutual Reserve Fund Life Association.*[3] I also find this case not relevant since this case arose out of the murder by Florence Maybrick of her husband who had effected a policy on his life for her benefit. The case there dealt with s 11 of the English Married Women's Property Act 1882.

(4) *Re Clay's Policy of Assurance; Clay* v *Earnshaw.*[4] The case too is irrelevant since it concerns trust created in favour of an adopted child and the laws considered there were the English Adoption of Children Act 1926 and s 11 of the English Married Women's Property Act 1882.

(5) *Re Sinclair's Life Policy.*[5] This was a life policy taken in favour of the deceased's godson. The law discussed there was s 56 of the English Law of Property Act 1925, and the court held that that section could not give the godson a beneficial title to the policy money because the godson was referred to in the policy as a 'nominee'. In the case before me, the plaintiff was expressly named as 'the beneficiary' to receive the policy money.

Learned counsel for the defendant also read to me a passage in *MacGillivray & Parkington on Insurance Law*, at para 1290(b) at p 539, and it is:

> Payee. If the policy moneys are made payable to some person other than the assured, that person, being a stranger to the contract and not privy to the consideration, is prima facie precluded from suing upon it, and the legal title remains vested in the assured, who alone can afford the company a good legal discharge.

The next paragraph (1291), not read to me, however states:

> However, if it is an essential term of the contract contained in the policy that payment shall be made to a named person and no other, the company is entitled to pay the money to that person notwithstanding any attempt to intercept it or any objection raised by the assured or his representatives, and from this it would seem to follow that the receipt of that person is a sufficient legal discharge to the company. Whether that person is to receive the money beneficially or merely as agent for the assured depends upon the intention of the parties (*Re Schebsman* [1943] Ch 366).

The policy No 847798-2 where the plaintiff is the named beneficiary contains the following clause:

> To Whom Payable:
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> The company shall pay the moneys hereby assured to the executors ... or to the beneficiary named above if then living, ... unless prevented by an assignment or other act or thing done or suffered to be done by the assured in his life time and provided there is no statutory or other restrictions to the contrary. Provided always that the assured may ... at any time by writing signed by him and delivered to the company revoke the appointment of the beneficiary named herein and may appoint another beneficiary. ...

This clearly shows that the defendant had contracted to pay, upon the death of the deceased, the moneys under the policy to the plaintiff as the only beneficiary named by the deceased. I am not shown any statutory provision which would prevent the defendant from paying the money to the plaintiff; nor was fraud or misrepresentation pleaded by the defendant. Therefore, though the plaintiff was not a party to the contract between the deceased and the defendant, she was certainly privy to the consideration, has a claim on the money and is entitled to sue the defendant for its payment to her.

Three provisions of the law had been cited in arguments before me. They are s 83 of the Probate and Administration Act 1959, s 23 of the Civil Law Act 1956, and s 44 of the Insurance Act 1963.

Section 83 of the Probate and Administration Act 1959 states:

> (1) Subject to subsection (2) whenever any person dies leaving property in Malaysia and the Official Administrator is satisfied after such investigation as he shall think sufficient —
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> (a) that the total value of the property without deduction for debts, but not including the value of any property which the deceased possessed or was entitled to as trustee and not beneficially, does not exceed three hundred thousand ringgit;
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> (b) that no petition for letters of administration is pending,
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> he may, if in his discretion he thinks fit to do so, by writing signed by him declare that he undertakes to administer the property, and thereupon he shall be empowered to administer it as though letters of administration, with or without the will annexed, of the estate of the deceased person had been granted to him, and his receipt shall be a sufficient discharge to any person who pays any money or delivers any property to him; and notice of every such declaration shall be filed in the proper Registry of the Court.
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> (2)(a) When the Official Administrator is satisfied that the value of any such property as is referred to in subsection (1) does not exceed ten thousand ringgit he may direct that the same or any part thereof be delivered, without letters of administration taken out, to any person or persons on his being satisfied as to the title of the claimant and value of

the property by the oath or affirmation of the claimant or by such other evidence as he may require and he may in his discretion take such security as he thinks proper for the due administration of the property or the property of the rights of any other person.

Section 23 of the Civil Law Act states:

(1) A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to his or her debts.
(2) If it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums so paid.
(3) The insured may by the policy or by any memorandum under his or her hand appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof and for the investment or the moneys payable under any such policy.
(4) In default of any such appointment of a trustee the policy immediately on its being effected shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid.
(5) If at the time of the death of the insured or at any time afterwards there is no trustee, or it is expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by the High Court,
(6) The receipt of a trustee or trustees duly appointed, or in default of any such appointment or in default of notice to the insurance office the receipt of the legal personal representatives of the insured, shall be a discharge to the office for the sum secured by the policy or for the value thereof in whole or in part.

Section 44 of the Insurance Act 1963 states:

(1) When a policy owner, in relation to any life policy or life policies, dies and on his death policy moneys are payable under the policy or policies, the insurer may make payment to a proper claimant such sum of the policy moneys as may be prescribed without the production of any probate or letters of administration and the insurer shall be discharged from all liability in respect of the sum paid.
(2) If, in any case mentioned in subsection (1), estate duty is leviable in Malaysia on any such policy moneys, the insurer may notwithstanding —

(a) section 50(ii) of the Estate Duty Enactment 1941 of the Federated Malay States; or
(b) section 35(1) of the Estate Duty Ordinance of Sabah,

pay to a proper claimant such sum as may be prescribed to be paid under subsection (1) without the policy moneys being included in the schedule or certificate mentioned in the sections referred to in paragraphs (a) and (b):

Provided that before making any payment under this subsection the insurer shall give not less than fourteen days' written notice by registered post to the Collector of Estate Duty with such particulars as he may require.

(3) Subsections (1) and (2) shall also apply to policy moneys under life policies of which the deceased was not the policy owner at his death.

(4) Where a sum is paid under subsection (2) on account of any policy moneys and the policy moneys are not within twelve months after the payment is made, included in the schedule or certificate referred to in subsection (2), the insurer shall deposit the balance with the Treasury; but before refunding such balance to the insurer on his application to pay to the person entitled to the balance, the Treasury may apply the whole or part of the sum deposited in paying any unpaid estate duty leviable on the death.

(5) In this section, 'policy owner' includes a part owner of a policy and 'proper claimant' means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum (whether for his own benefit or not) and is the widower, widow, parent, child, brother, sister, nephew or niece of the deceased; and in deducing any relationship for the purposes of this subsection an illegitimate person shall be treated as the legitimate child of his actual parents.

Another provision of the law not cited to me is reg 2 of the Insurance (Payment of Life Policy Moneys) Regulations 1983 PU(A) 292 of 1983 which came into force on 28 July 1983 and which states:

2 An insurer may, in relation to any life policy or life policies issued by the insurer, make the following payment to a proper claimant without the production of probate or letters of administration:

(a) if the policy moneys of all such policies is in the aggregate twenty thousand ringgit or less, the insurer may pay the full sum to the proper claimant;
(b) if the policy moneys of all such policies exceed in the aggregate twenty thousand ringgit, the insurer may pay to the proper claimant sixty thousand ringgit or nine-tenths of the policy moneys whichever is the lesser.

As far as the wife and child of the deceased are concerned, it is crystal clear that by virtue of s 23 of the Civil Law Ordinance 1956, as the policy of assurance was effected by the assured on his own life and expressed to be for the benefit of his wife and child, the moneys payable under the policy does not form part of the estate of the deceased. The money in policy No 5040459-4 should have been paid out by the defendant to the widow of the deceased. The Official Administrator committed an error when he requested for this money to be paid to him for his distribution under s 83 of the Probate and Administration Act 1959 — see *Re Man bin Mihat, deceased.*[7]

The deceased had not left any will. He had expressly appointed and named his mother S Manonmani as the sole beneficiary in his life policy No 847798-2. The defendant had agreed to pay the insurance moneys under this policy to the beneficiary appointed and named

by the deceased. The deceased in his life time never revoked the plaintiff as the sole beneficiary under that policy.

It is true that the interest of the beneficiary (plaintiff) was liable to be defeated by the deceased's revoking the appointment, but this would only result in an interest otherwise vested, becoming divested, but the fact remains that the beneficiary's interest had not been divested and is still subsisting when the deceased died. I also note that the life policy where the plaintiff is appointed and named as the sole beneficiary is a whole life policy which means that the policy money will not be paid to the deceased during his life time. The policy money only became payable upon his death. It is unlike the other policy which is an endowment policy which was for a period of 25 years where, had the deceased survived that period, he would have been able to collect the sum assured.

In my view, since it had been agreed between the defendant and the deceased that the policy was to form a binding contract between them, and that the defendant had agreed to pay the named beneficiary (the plaintiff) the moneys due under the policy on the death of the deceased, the defendant is bound to honour the contract, and the beneficiary if not paid, is entitled to sue the defendant for the moneys payable under that policy without the production of any letters of administration of the estate of the deceased.

Further, I find that s 44 of the Insurance Act 1963, is a new provision having been inserted into this Act by Act A546/1983 gazetted on 17 February 1983. The purpose of s 44 of the Insurance Act 1963 is no doubt to facilitate and expedite payment by an insurer of any money due under a life policy to a 'proper claimant' without the need for the claimant to first obtain any letters of administration. This section would, I believe, apply where the deceased policy owner either had not appointed and named any beneficiary in the policy to receive the policy money upon his death in which case the policy money would go to his estate, or he had specifically stated in the policy that the policy money should go to his estate when he died. In that event, the insurer is nevertheless authorized by this section to pay out the policy money to a 'proper claimant' as described under s 44(5) of the Insurance Act 1963, the payment being subject to s 44(2) and the Insurance (Payment of Life Policy Moneys) Regulations 1983.

In this case the deceased policy holder had expressly appointed and named the plaintiff who is his mother to be the beneficiary to receive the policy money after his death. That policy was taken by the deceased after his marriage. His intention is clear that the policy money should be paid to his mother, and to ensure that his wife and child would not be left with nothing, he had taken out another life policy wherein he appointed and named his wife and child as the beneficiaries.

The policy money in policy No 847798-2 should be paid by the defendant to the plaintiff. Whether that money attracts any estate duty has not been argued before me by both learned counsel representing the parties. As such this question should be referred to the Collector of Estate Duty.

For the reasons stated, I answer the questions posed in the originating summons as follows:

(a) Affirmative.
(b) Affirmative.
(c) Payment to be made by the defendant to the plaintiff.

As regards (c), in the event of estate duty being leviable on the sum to be paid to the plaintiff, that duty should be paid out of the moneys due to the plaintiff. As such, the defendant should take action under s 44(2) by giving 14 days' written notice by registered post to the Collector of Estate Duty with such particulars as may be required by the Collector. The defendant should now pay 90% of the moneys payable to the plaintiff under life policy No 847798-2.

Since the moneys payable by the defendant under the two policies had been deposited with the Official Administrator, they should be refunded to the defendant for payments to the beneficiaries named in the policies.

I also awarded costs to be paid by the defendant to the plaintiff.

Order accordingly.

Solicitors: *RK Nathan & Co; Skrine & Co.*

Reported by *Yap Shao Sin*